

STATE OF MICHIGAN
IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

-VS-

CLEVELAND WAYNE WILLIAMS,

Defendant-Appellant.

WAYNE COUNTY PROSECUTOR
By: JEFFREY CAMINSKY (P27258)
Attorney for Plaintiff-Appellee

STATE APPELLATE DEFENDER OFFICE
Attorney for Defendant-Appellant

Supreme Court No. 126956

Court of Appeals No. 239662

Circuit Court No. 01-7419-01

126956

APPELLANT'S SUPPLEMENTAL BRIEF
IN SUPPORT OF APPLICATION FOR LEAVE TO APPEAL

STATE APPELLATE DEFENDER OFFICE

BY: JACQUELINE J MCCANN (P58774)
Assistant Defender
3300 Penobscot Building
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FILED

APR - 8 2005

CORBIN R. DAVIS
CLERK
MICHIGAN SUPREME COURT

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STATEMENT OF QUESTIONS PRESENTED

- I. **DID PEOPLE V CHAVIES, 234 MICH APP 274 (1999), INCORRECTLY HOLD THAT MCL 780.131 DOES NOT APPLY TO A DEFENDANT WHO WAS ON PAROLE AT THE TIME OF THE OFFENSE WITH WHICH THE DEFENDANT IS CHARGED?**

Court of Appeals answers, "No".

Defendant-Appellant answers, "Yes".

STATEMENT OF FACTS

Defendant-Appellant Cleveland Wayne Williams relies on the Statement of Facts in his previously filed Application for Leave to Appeal and supplements it as follows. In its Order of March 11, 2005, this Honorable Court directed its Clerk to schedule oral argument on Appellant's application and allowed for the parties to file supplemental briefs. (Appendix A - Supreme Court Order, 3/11/05). This Court directed: "The parties shall include among the issues to be addressed whether People v Chavies, 234 Mich App 274 (1999), correctly held that MCL 780.131 does not apply to a defendant who was on parole at the time of the offense with which the defendant is charged." (Id.)

I. **PEOPLE V CHAVIES, 234 MICH APP 274 (1999),
INCORRECTLY HELD THAT MCL 780.131 DOES NOT
APPLY TO A DEFENDANT WHO WAS ON PAROLE AT
THE TIME OF THE OFFENSE WITH WHICH THE
DEFENDANT IS CHARGED.**

MCL 780.131 provides the “180-day rule” and two exceptions to the rule. In People v Chavies, the Court of Appeals added a third exception. In doing so, the Court of Appeals violated the rules of statutory interpretation.

Standard of Review

This Court reviews issues of statutory interpretation de novo. People v Barbee, 470 Mich 283, 285 (2004); People v Krueger, 466 Mich 50, 53 (2002).

Discussion

The statute at issue, MCL 780.131, establishes the 180-day rule and provides two exceptions to the rule:

- (1) Whenever the department of corrections receives notice that there is pending in this state any untried warrant, indictment, information, or complaint setting forth against any inmate of a correctional facility of this state a criminal offense for which a prison sentence might be imposed upon conviction, *the inmate shall be brought to trial within 180 days* after the department of corrections causes to be delivered to the prosecuting attorney of the county in which the warrant, indictment, information, or complaint is pending written notice of the place of imprisonment of the inmate and a request for final disposition of the warrant, indictment, information, or complaint. The request shall be accompanied by a statement setting forth the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time or disciplinary credits earned, the time of parole eligibility of the prisoner, and any decisions of the parole board relating to the prisoner. The written notice and statement shall be delivered by certified mail.
- (2) *This section does not apply to a warrant, indictment, information, or complaint arising from either of the following:*

(a) *A criminal offense committed by an inmate of a state correctional facility while incarcerated in the correctional facility.*

(b) *A criminal offense committed by an inmate of a state correctional facility after the inmate has escaped from the correctional facility and before he or she has been returned to the custody of the department of corrections.*

[Emphasis added.]

The Court of Appeals added a third exception in People v Chavies, 234 Mich App 274 (1999). The Court of Appeals held that the “statutory goal” of the 180-day rule was to allow sentences to run concurrently. Id. at 280. The Court held that because consecutive sentencing is mandatory when someone commits a new offense while on parole, per MCL 768.7(a)(2), the goal of concurrent sentencing is impossible and the 180-day rule does not apply. Id. at 280-281.

In so holding, the Court of Appeals violated the cardinal rules of statutory interpretation. The Court of Appeals’ holding is wholly inconsistent with the plain language of MCL 780.131.

The primary goal of statutory construction is to ascertain and give effect to the intent of the Legislature. People v Morson, 471 Mich 248, 255 (2004). The most relevant starting point for discerning legislative intent lies in the plain language of the statute in question, i.e. the words of the statute itself supplies the most reliable source of the Legislature’s intent. Shinholster v Annapolis Hospital, 471 Mich 540, 549 (2004). If the language used by the Legislature is clear and unambiguous, courts must enforce the statute as written and follow its plain meaning, free of any judicial gloss. Barbee, supra at 286; Morson, supra at 255; Shinholster, supra at 549; Morales v Auto-Owners Insurance Co, 469 Mich 487, 490 (2003); People v Adair, 184 Mich App 703, 704 (1990).

Here, the statute specifically states that the 180-day rule does not apply to offenses allegedly committed by an inmate while incarcerated in a correctional facility or while escaped. MCL 780.131(2). “[A] cardinal rule of statutory construction is that the express mention of one thing in the statute generally implies the exclusion of other similar things.” Adair, supra at 704. If the Legislature had meant to also exclude offenses allegedly committed by an inmate while on parole, it could have easily added that exception. See Barbee, supra at 286-287. The Court of Appeals had no authority to add a third exception to the statute.

SUMMARY AND REQUEST FOR RELIEF

WHEREFORE, for the foregoing reasons and the reasons given in his previously filed Application for Leave to Appeal, Defendant-Appellant **CLEVELAND WAYNE WILLIAMS** asks this Honorable Court to grant leave to appeal or take appropriate peremptory action, to reverse, and to order that the charges be dismissed with prejudice.

Respectfully submitted,

STATE APPELLATE DEFENDER OFFICE

BY: _____

JACQUELINE J. McCANN (P58774)

Assistant Defender

3300 Penobscot Building

645 Griswold

Detroit, Michigan 48226

(313) 256-9833

Dated: April 7, 2005

APPENDIX A

Order

Michigan Supreme Court
Lansing, Michigan

March 11, 2005

Clifford W. Taylor
Chief Justice

126956

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman
Justices

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

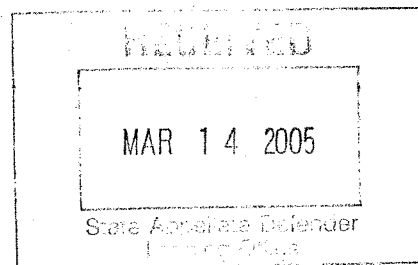
v

SC: 126956
COA: 239662
Wayne CC: 01-007419-01

CLEVELAND WAYNE WILLIAMS,
Defendant-Appellant.

On order of the Court, the application for leave to appeal the July 9, 2004 order of the Court of Appeals is considered and, pursuant to MCR 7.302(G)(1), we direct the Clerk to schedule oral argument on whether to grant the application or take other peremptory action permitted by MCR 7.302(G)(1). The parties shall include among the issues to be addressed whether *People v Chavies*, 234 Mich App 274 (1999), correctly held that MCL 780.131 does not apply to a defendant who was on parole at the time of the offense with which the defendant is charged. The parties may file supplemental briefs within 28 days of the date of this order.

/0308



I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

March 11

, 2005

Corbin R. Davis

Clerk

STATE OF MICHIGAN
IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN

Plaintiff-Appellee

-VS-

CLEVELAND WAYNE WILLIAMS

Defendant-Appellant.

Supreme Court No. 126956

Court of Appeals No. 239662

Lower Court No. 01-7419-01

PROOF OF SERVICE

JACQUELINE J MCCANN, Attorney at Law, certifies that on **April 7, 2005**, she mailed via first-class mail, one copy of the **Appellant's Supplemental Brief in Support of Application for Leave to Appeal** and **Proof of Service** to:

Jeffrey Caminsky
Assistant Prosecuor
Wayne County Prosecutor's Office
Appellate Division
Frank Murphy Hall of Justice, 11th Floor
1441 St. Antoine
Detroit, MI 48226


JACQUELINE J MCCANN (P58774)

STATE APPELLATE DEFENDER OFFICE

SUITE 3300 PENOBSCOT • 645 GRISWOLD • DETROIT, MICHIGAN 48226-4281

Phone: 313.256.9833 • Fax: 313.965.0372

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JAMES R. NEUHARD
DIRECTOR

NORRIS J. THOMAS, JR.
CHIEF DEPUTY DIRECTOR

DAWN VAN HOEK
DEPUTY DIRECTOR



LANSING OFFICE
101 NORTH WASHINGTON
14TH FLOOR
LANSING, MICHIGAN 48913-0001
Phone: 517.334.6069 Fax: 517.334.6987

website: www.sado.org

April 7, 2005

Clerk
Michigan Supreme Court
P. O. Box 30052
Lansing, MI 48909

126956
Re: People v Cleveland Wayne Williams
Supreme Court No. 126956
Court of Appeals No. 239662
Circuit Court No. 01-7419-01

Dear Clerk:

Enclosed for filing please find the original and seven (7) copies of **Appellant's Supplemental Brief in Support of Application for Leave to Appeal** and the original **Proof of Service**.

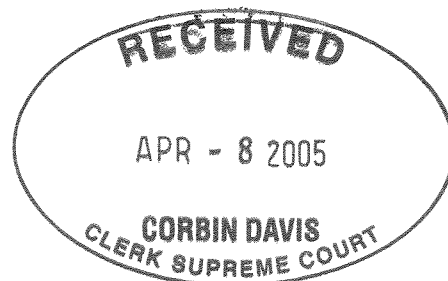
Thank you for your cooperation.

Sincerely,

Jacqueline J McCann
Assistant Defender

Enclosures

cc: Jeffrey Caminsky, Assistant Prosecutor
Cleveland Wayne Williams
File



**STATE OF MICHIGAN
IN THE SUPREME COURT**

THE PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

vs

Supreme Court No. 126956

CLEVELAND WILLIAMS,

Defendant-Appellant.

Lower Court No. 01-07419

Court of Appeals No. 239662

NOTICE OF HEARING

***MOTION TO EXTEND TIME
FOR FILING SUPPLEMENTAL BRIEF***

AFFIDAVIT IN SUPPORT OF MOTION

KYM L. WORTHY
Prosecuting Attorney
County of Wayne

TIMOTHY A. BAUGHMAN
Chief of Research,
Training, and Appeals

JEFFREY CAMINSKY (P27258)
Assistant Prosecuting Attorney
11th Floor, 1441 St. Antoine
Detroit, Michigan 48226
(313) 224-5846

FILED

APR 21 2005

CORBIN C. LAVIS
CLERK
MICHIGAN SUPREME COURT

**STATE OF MICHIGAN
IN THE SUPREME COURT**

THE PEOPLE OF THE STATE OF MICHIGAN,

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CLEVELAND WILLIAMS,

Defendant-Appellant.

Lower Court No. 01-07419

Court of Appeals No. 239662

***MOTION TO EXTEND TIME
FOR FILING SUPPLEMENTAL BRIEF***

NOW COMES the People, by and through **KYM L. WORTHY**, *Prosecuting Attorney*, **TIMOTHY A. BAUGHMAN**, *Chief of Research Training, & Appeals*, and **JEFFREY CAMINSKY**, *Principal Attorney, Appeals*, and hereby move this Court for an extension of time for filing Plaintiff's Brief on Appeal in this matter, for the following reasons:

1. On March 11, 2005, this Court directed the Clerk to schedule oral argument on Defendant's application, and allowed for the parties to file supplemental briefs, which were due on or about April 7, 2005.

2. This Court's order came just before a scheduled out-of-town trip for counsel, who arrived back in town on March 28, 2005, and had planned to commence work on the brief upon his return.

3. Counsel spent March 28-29, 2005 returning telephone calls and email, and tending to matters left unattended during his absence on vacation.

4. On March 30, 2005, counsel was absent from work, due to the onset of what appeared to

be a minor viral infection, anticipating a return to work within a day or two.

5. As it turned out, counsel's illness was subsequently diagnosed as an acute case of mononucleosis, which left counsel unable to return to work until April 18, 2005; counsel has since been working a shortened workday, to accommodate his recovery.

5. Accordingly, the People have been unable to comply with the Court's original deadline, and request a short extension of time within which to file their supplemental brief.

WHEREFORE, this Court should grant a short extension of time for filing Plaintiff-Appellee's Supplemental Brief in this matter, to April 29, 2005.

KYM L. WORTHY

Wayne County Prosecuting Attorney

TIMOTHY A. BAUGHMAN

Chief of Research, Training, & Appeals

JEFFREY CAMINSKY (P27258)

Principal Attorney, Appeals

1116 Frank Murphy Hall of Justice

Detroit, Michigan 48226

Phone: 313-224-5846

Dated: April 20, 2005

JC/lw

H:\JCAMINSK\MSC\MOTIONS\MEOT2.wpd

**STATE OF MICHIGAN
IN THE SUPREME COURT**

THE PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

vs

Supreme Court No. 126956

CLEVELAND WILLIAMS,
Defendant-Appellant.

Lower Court No. 01-07419
Court of Appeals No. 239662

AFFIDAVIT IN SUPPORT

STATE OF MICHIGAN)
COUNTY OF WAYNE)ss

JEFFREY CAMINSKY, being duly sworn, deposes and says that he is an Assistant
Prosecuting Attorney in the Office of the Prosecuting Attorney for the County of Wayne.

Further, that affiant has read the foregoing MOTION as subscribed and knows the contents
thereof, and that the same is true to his own knowledge, except as to matters therein stated to be on
information and belief, and as to those matters he believes them to be true.



JEFFREY CAMINSKY

Subscribed and sworn to before me
this th day of April, 2005.

Joycelyn Sharp
Notary Public, Wayne County, Michigan
My Commission Expires: 3/8/09

**STATE OF MICHIGAN
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Defendant-Appellant.

Lower Court No. 01-07419

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NOTICE OF HEARING

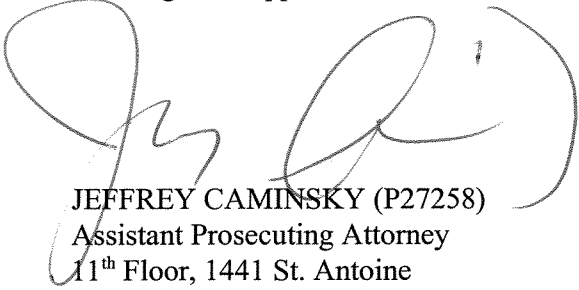
TO: Jacqueline J. McCann
Attorney at Law
645 Griswold, Ste. 3300
Detroit, MI 48226

PLEASE TAKE NOTICE that the attached Motion to Extend Time Within Which to file Brief on Appeal will be brought on for hearing in the Michigan Supreme Court in Lansing, Michigan on Tuesday, May 3, 2005 or to be set by court.

Respectfully submitted,

KYM L. WORTHY
Prosecuting Attorney
County of Wayne

TIMOTHY A. BAUGHMAN
Chief of Research,
Training, and Appeals



JEFFREY CAMINSKY (P27258)
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11th Floor, 1441 St. Antoine
Detroit, Michigan 48226
Phone: (313) 224-5846

JC/js

STATE OF MICHIGAN
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CLEVELAND WILLIAMS,
Defendant-Appellant.

Lower Court No. 01-07419
Court of Appeals No. 239662

PROOF OF SERVICE

STATE OF MICHIGAN)
COUNTY OF WAYNE)ss

The undersigned deponent, being duly sworn, deposes and says that she caused to have served a true copy of **Notice of Hearing, Motion to Extend time and Affidavit in Support of Motion**

upon: Jacqueline J. McCann

the within named attorney for defendant, by / PERSONAL SERVICE or by /X/ DEPOSITING SAID PLEADING IN THE U.S. MAIL IN THE CITY OF DETROIT, enclosed in an envelope bearing postage fully prepaid on April ~~20~~ 2005, plainly addressed as follows:

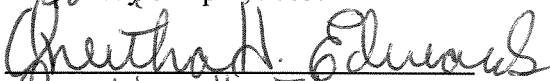
Jacqueline McCann
Assistant Defender
3300 Penobscot Bldg.
Detroit, MI 48226


Joycelyn Sharp

and said pleading was filed in the Supreme Court, by PERSONAL SERVICE at the following address:

CORBIN R. DAVIS, Clerk
Michigan Supreme Court
P.O. Box 30052
Lansing, Michigan 48909

Subscribed and sworn to before me
this ~~20~~ day of April, 2005.


Onetha H. Edwards
Notary Public, Wayne County, Michigan
My commission expires: 01-23-09